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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,620	03/18/2002	Jeremy C. Rosenberg	2917-117	3143
6449	7590	04/04/2007		
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			EXAMINER FORD, GRANT M	
			ART UNIT 2141	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/04/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/04/2007.

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PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/098,620	ROSENBERG ET AL.	
	Examiner	Art Unit	
	Grant Ford	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-3-07, 2-13-07, 9-15-06, 6-8-06</u>                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The indicated allowability of claim 33 is withdrawn in view of the newly discovered reference(s) to Cluts. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-8,12,16,18-20,22-25,27,29,and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Cluts (5,616,876).

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a. As per claims 1 and 18, Cluts discloses a method and system comprising the steps of:

storing one or more audio channel profiles (Col 4 lines 38-54 – see playlists, Col 11 lines 34-48);

associating each of the one or more audio channel profiles with a personalized audio channel, wherein the audio channel profile associated with a personalized audio channel is used to select the sound recordings that are played for the personalized audio channel (Col 4 lines 51-54, Col 11 lines 34-48);

receiving a broadcast sound recording over a broadcast audio channel (Col 13 lines 58-62);

playing the received broadcast sound recording so that a user can listen to the received broadcast sound recording (Col 13 line 63 through Col 14 line 11);

receiving an indication from the user that the user likes the received broadcast sound recording (Col 13 line 63 through Col 14 line 11); and

modifying at least one of the one or more audio channel profiles in response to receiving the indication that the user likes the received broadcast sound recording (Col 13 line 63 through Col 14 line 11).

b. As per claims 2 and 19, Cluts discloses wherein said at least one of the one or more profiles includes a set of one or more sound recording identifiers, and the step of modifying said at least one of the one or more audio channel profiles comprises the step of adding a sound recording identifier that identifies the received broadcast

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sound recording to said set of sound recording identifiers included in the at least one profile (Col 13 lines 38-62, Col 13 line 67 through Col 14 line 2, Col 16 lines 25-39).

c. As per claims 3 and 20, Cluts discloses wherein said at least one of the one or more profiles includes a set of one or more artist identifiers, and the step of modifying said at least one of the one or more audio channel profiles comprises the step of adding an artist identifier that identifies the artist that recorded the received broadcast sound recording to said set of artist identifiers included in the at least one profile (Col 13 lines 38-62, Col 13 line 67 through Col 14 line 2, Col 16 lines 25-39).

d. As per claims 6 and 23, Cluts discloses the step of receiving information about the received broadcast sound recording (Col 13 lines 28-43).

e. As per claims 7 and 24, Cluts discloses the step of selecting one or more of the audio channel profiles based on the received information concerning the received broadcast sound recording and wherein the step of modifying at least one of the one or more audio channel profiles comprises the step of modifying at least one of the selected profiles (Col 12 lines 41-67, Col 14 lines 12-50).

f. As per claims 8 and 25, Cluts discloses wherein the information concerning the sound recording indicates a genre to which the sound recording belongs (Col 14 lines 12-50, Col 15 lines 34-67).

g. As per claims 12 and 27, Cluts discloses a method and system of displaying to a user a user interface that enables the user to select the first or second personalized audio channel, wherein the user interface displays both a name associated with the first personalized audio channel and a name associated with the

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second personalized audio channel (Figures 4 and 12-13, Col 12 line 41 through Col 13 line 7, Col 13 lines 17-37);

after displaying the user interface, receiving from the user an indication that the user desires to listen to a selected one of the two or more personalized audio channels (Col 13 lines 17-37);

playing a set of sound recordings, wherein the set of sound recording matches the profile associated with the selected personalized audio channel (Col 13 line 44 through Col 14 line 11);

receiving a broadcast sound recording over a broadcast audio channel (Col 13 line 44 through Col 14 line 11);

playing the received broadcast sound recording so that a user can listen to the broadcast sound recording (Col 13 line 44 through Col 14 line 11);

enabling a user to indicate that the user likes or does not like the received broadcast sound recording (Col 13 line 44 through Col 14 line 11); and

modifying at least one of the two or more profiles in response to the user indicating that the user likes or does not like the received broadcast sound recording (Col 13 line 44 through Col 14 line 11).

h. As per claims 16 and 29, Cluts discloses a system and method comprising:

playlist creation means for creating one or more playlists, wherein each playlist is associated with one of the personalized audio channels, wherein each playlist specifies a set of sound recording, and wherein the playlist creations means uses the

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information in the profile associated with a personalized audio channel in creating the playlist associated with the personalized audio channel (Col 12 line 41 through Col 13 line 7);

means for receiving from the user an indication that the user desires to listen to one of the personalized audio channels (Col 13 lines 17-37);

means for selecting in response to the received indication a sound recording specified in the playlist that is associated with the personalized audio channel to which the user desires to listen (Col 13 line 44 through Col 14 line 11);

means for retrieving the selected sound recording (Col 13 line 44 through Col 14 line 11);

means for playing the selected sound recording so that the user can listen to the sound recording (Col 13 line 44 through Col 14 line 11);

means for receiving a broadcast sound recording over a conventional broadcast audio channel (Col 13 line 44 through Col 14 line 11);

means for playing the broadcast sound recording so that a user can listen to the broadcast sound recording (Col 13 line 44 through Col 14 line 11);

means for enabling the user to indicate that the user likes or does not like the broadcast sound recording (Col 13 line 44 through Col 14 line 11);

means for modifying at least one of the one or more profiles in response to the user indicating that the user does not like the broadcast sound recording (Col 13 line 44 through Col 14 line 11).

i. As per claim 22, Cluts discloses means for receiving an input from a user, wherein the input specifies one or more of the audio channel profiles and wherein the means for modifying at least one of the one or more profiles modifies at least one of the specified profiles (Col 13 lines 17-37, Col 13 line 44 through Col 14 line 11).

j. As per claim 32, Cluts discloses enabling a user to create a new audio channel profile without requiring the user to input any user identifier (Col 13 lines 17-27).

k. As per claim 33, Cluts discloses enabling a user to create a first audio channel profile that specifies at least one artist, song and/or genre of music and a second audio channel profile that specifies at least one artist, song, and/or genre of music, wherein the second audio channel profile specifies at least one artist, song, and/or genre of music that is not specified in the first audio channel profile (Col 15 lines 36-67).

l. As per claim 34, Cluts discloses wherein the audio channel profile associated with a personalized audio channel is used to select all of the sound recordings that are played for the personalized audio channel (Col 15 lines 36-67).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the



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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,9-10,13-14,17,21,26,28,and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts in view of Leeke et al. (6,587,127) hereinafter referred to as Leeke.

a. As per claims 4 and 21, Leeke teaches enabling a user to specify the degree to which the user likes the sound recording (Col 35 lines 48-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a degree-based approval system with network based music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing an end user to specify how much they like or dislike a track (Col 35 lines 48-50).

b. As per claims 9,13,17,26,28, and 30, Leeke teaches the use of a cache to store a broadcast sound recording as it is being received (Col 48 lines 38-47, Col 49 lines 12-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a cache for storing broadcast sound recordings with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of pre-queuing and pre-buffering audio data for streaming at a client apparatus (Col 48 lines 38-47).

c. As per claims 10 and 14, Leeke teaches the step of providing a means for enabling a user to provide an indication that a user would like to obtain a copy of the broadcast sound recording (Col 14 lines 40-44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use

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of a purchase option with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing a user to possess a legal copy of a selected broadcast sound recording (Col 14 lines 40-44).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts and Leeke in view of Hempleman et al. (6,243,725) hereinafter referred to as Hempleman.

a. As per claim 5, Cluts discloses modifying a selected profile or profiles (Col 13 line 44 through Col 14 line 11).

Hempleman teaches requesting a user to select at least one audio channel profile in response to receiving an indication (Figure 3o, Col 6 lines 14-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of selecting a profile to modify with network based playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of writing changes to a playlist to a database (Figure 3o, Col 6 lines 14-22).

Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts and Leeke and Mankovich et al. (2003/0097338) hereinafter referred to as Mankovich.

a. As per claims 11 and 15 Leeke teaches determining whether the user may obtain a copy of the broadcast sound recording in response to the user providing an

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indication that the user would like to obtain a copy of the broadcast sound recording (Col 23 lines 60-66, Col. 24 lines 15-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a purchase option with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing a user to possess a legal copy of a selected broadcast sound recording (Col 14 lines 40-44).

Mankovich teaches copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy (Para. 0030). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of transition from a cache to a non-volatile storage medium with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing download of digital copies of content upon purchase request (Para. 0030).

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grant Ford whose telephone number is (571)272-8630. The examiner can normally be reached on 8-5:30 Mon-Thurs alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571)272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gmf

  
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SUPERVISORY PATENT EXAMINER